

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONNA J.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 3:18-cv-05296-TLF

ORDER ON PLAINTIFF'S MOTION
TO ALTER OR AMEND THE
JUDGMENT PURSUANT TO
FEDERAL RULE OF CIVIL
PROCEDURE 59(E)

On September 5, 2019, this Court entered judgment for the Defendant, finding that Defendant's decision to deny Plaintiff's application for disability insurance benefits was supported by substantial evidence. See Dkt. 20, 21. Presently before the Court is Plaintiff's Motion to Alter or Amend Judgment pursuant to Federal Rule of Civil Procedure 59(e) ("Motion"). Dkt. 22.

The Court may alter or amend a judgment under Rule 59(e) where the Court has committed clear error. See *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003). Rule 59(e) provides an “extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources.” *Id.* (citation and internal quotation marks omitted). Plaintiff argues the Court should alter the judgment and reverse Defendant’s decision to deny benefits because the Court’s decision is based on a clear error of law. Dkt. 22, pp. 1-2.

1 After hearing oral argument, on October 15, 2019 this Court issued an order
2 withdrawing its initial order and judgment and directing the parties to submit additional
3 briefing on the question of whether evidence of statements, opinions, and assessments
4 from Stephen Langer, Ph.D. and Farren Ray Akins, Ph.D., J.D. was properly considered
5 by the ALJ in the decision finding that Plaintiff was not disabled. Dkt. 27, p. 1. The
6 parties have consented to have this matter heard by the undersigned Magistrate Judge.
7 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. This matter
8 has been fully briefed. Dkt. 30, 32, 33.

9 For the reasons set forth below, Plaintiff's Motion to Alter or Amend Judgment is
10 GRANTED and this case is remanded for an award of benefits as to the period between
11 February 10, 2006 and August 31, 2011.

12 I. Whether the ALJ erred in evaluating evidence from Dr. Langer and Dr. Akins

13 In assessing an acceptable medical source – such as a medical doctor – the ALJ
14 must provide “clear and convincing” reasons for rejecting the uncontradicted opinion of
15 either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
16 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)); *Embrey v. Bowen*,
17 849 F.2d 418, 422 (9th Cir. 1988)). When a treating or examining physician's opinion is
18 contradicted, the opinion can be rejected “for specific and legitimate reasons that are
19 supported by substantial evidence in the record.” *Lester*, 81 F.3d at 830-31 (citing
20 *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d
21 499, 502 (9th Cir. 1983)).

1 A. Dr. Langer

2 Dr. Langer evaluated Plaintiff on March 19, 2007. AR 1073. And Dr. Langer
3 continued to have a treating relationship with Plaintiff including 14 appointments; his last
4 session with her was on October 15, 2008. AR 914-16, 937-39, 976-82, 984, 1070-82,
5 2195.

6 On January 2, 2008, Dr. Langer opined that Plaintiff would have a range of
7 moderate and marked work-related limitations stemming from her mental impairments.
8 AR 917-26.

9 On September 3, 2008, Dr. Langer assessed Plaintiff as having marked
10 limitations in the ability to remember locations and work-like procedures; sustaining
11 ordinary routine without supervision; working in coordination with or proximity to others
12 without being distracted by them; completing a normal workweek without interruptions;
13 and traveling to unfamiliar places or using public transportation. AR 954. Dr. Langer
14 stated that Plaintiff would have moderate limitations in interacting appropriately with the
15 general public; accepting instructions and responding appropriately to criticism from
16 supervisors; understanding, remembering, and carrying out detailed instructions; and
17 maintaining attention and concentration for extended periods. *Id.*

18 Dr. Langer stated that Plaintiff's psychiatric condition exacerbated her perception
19 of pain, and that she was not capable of performing even low stress work. *Id.* Dr. Langer
20 opined that Plaintiff would likely miss more than 3 days of work per month due to her
21 impairments, that her symptoms were ongoing and dated back to July 11, 2005, and
22 were expected to last at least 12 months. *Id.* In October 2008, Dr. Langer issued a

1 similar opinion, this time stating that Plaintiff was incapable of maintaining any type of
2 competitive employment. AR 984.

3 In discounting Dr. Langer's opinion, the ALJ acknowledged that Dr. Langer is a
4 treating source who is normally entitled to deference. AR 1388. See 20 C.F.R. §
5 404.1527(b)(2) ("Generally, we give more weight to medical opinions from your treating
6 sources, since these sources are likely to be the medical professionals most able to
7 provide a detailed, longitudinal picture of your medical impairment(s) and may bring a
8 unique perspective to the medical evidence that cannot be obtained from the objective
9 medical findings alone or from reports of individual examinations, such as consultative
10 examinations or brief hospitalizations."); see also *Turner v. Comm'r of Soc. Sec. Admin.*,
11 613 F.3d 1217, 1222 (9th Cir. 2010) (noting that SSA generally gives more weight to the
12 opinion of a treating source).

13 However, the ALJ assigned "limited weight" to Dr. Langer's opinions, reasoning
14 that: (1) Dr. Langer relied on Plaintiff's self-reports, without providing clinical findings or
15 independent observations to support his opinion, except in conclusory letters and forms;
16 (2) Dr. Langer's opinions were internally inconsistent; (3) Dr. Langer did not sufficiently
17 explain his opinion; (4) Dr. Langer did not define what he meant by "low stress" work;
18 and (5) Dr. Langer's opinions were inconsistent with Plaintiff's own statements to other
19 physicians. AR 1388-90.

20 With respect to the ALJ's first reason, an ALJ may reject a physician's opinion "if
21 it is based 'to a large extent' on a claimant's self-reports that have been properly
22 discounted as incredible." *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008)
23 (quoting *Morgan v. Comm'r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)). This
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1 situation is distinguishable from one in which the doctor provides her own observations
2 in support of her assessments and opinions. See *Ryan v. Comm'r of Soc. Sec. Admin.*,
3 528 F.3d 1194, 1199-1200 (9th Cir. 2008). “[W]hen an opinion is not more heavily
4 based on a patient’s self-reports than on clinical observations, there is no evidentiary
5 basis for rejecting the opinion.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th Cir. 2014)
6 (citing *Ryan*, 528 F.3d at 1199-1200).

7 Here, Dr. Langer utilized objective measures such as clinical interviews and
8 relied on his own observations in forming his opinion, and there is no evidence that he
9 relied largely upon Plaintiff’s self-reports. AR 914-16, 937-39, 976-82, 984, 1070-82,
10 2195. See *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) (a psychiatrist’s clinical
11 interview and mental status examinations are “objective measures” which “cannot be
12 discounted as a self-report” and noting that psychological diagnoses will always depend
13 partly on the patient’s self-report, as well as on the clinician’s observations of the
14 patient) (internal citations omitted).

15 As for the ALJ’s second reason, an internal inconsistency can serve as a specific
16 and legitimate reason for discounting a physician’s opinion. See *Morgan v. Comm'r of*
17 *Soc. Sec. Admin.*, 169 F.3d 595, 603 (9th Cir. 1999); see also *Rollins v. Massanari*, 261
18 F.3d 853, 856 (9th Cir. 2001) (upholding ALJ’s rejection of an internally inconsistent
19 medical opinion).

20 In finding Dr. Langer’s opinions internally inconsistent, the ALJ noted that in his
21 January 2008 opinion, Dr. Langer assessed Plaintiff as having marked limitations in
22 remembering locations and work-like procedures, but no limitations in the ability to
23 understand, remember, and carry out 1 or 2 step instructions, and only moderate
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1 limitation in the ability to understand, remember, and carry out detailed instructions. AR
2 1388-89.

3 The ALJ reasoned that if an individual were unable to remember locations and
4 work-like procedures, she would have more than moderate limitation in understanding,
5 remembering, and carrying out detailed instructions and would have some degree of
6 limitation in performing 1 and 2 step instructions. AR 1388-89.

7 The ALJ's decision is not supported by substantial evidence, because as a
8 factual matter there is not an inconsistency, as discussed above, in Dr. Langer's
9 opinion. The form completed by Dr. Langer contains the heading "Understanding and
10 Memory", which contains the three limitation categories discussed above. AR 920. The
11 first category deals with memory, while the latter two deal with understanding and
12 cognition, and ask for an opinion on different aspects of Plaintiff's functional ability.
13 Further, Dr. Langer opinion is consistent with his treatment notes, in which he noted that
14 Plaintiff had a poor memory, and that she missed several appointments with him after
15 she forgot about them. AR 984, 1071. Dr. Langer's opinion is also consistent with the
16 record, which indicates that Plaintiff required some assistance from co-workers to
17 complete basic work-related mental tasks. AR 1793.

18 With respect to the ALJ's third reason, a finding that a physician has not
19 sufficiently explained his or her opinion can serve as a specific and legitimate reason for
20 discounting that opinion. See 20 C.F.R. § 404.1527(c)(3) ("The more a medical source
21 presents relevant evidence to support a medical opinion, particularly medical signs and
22 laboratory findings, the more weight we will give that medical opinion. The better an
23 explanation a source provides for a medical opinion, the more weight we will give that

1 medical opinion."); *see also Batson v. Comm'r Soc. Sec. Admin.*, 359 F.3d 1190, 1196
2 (9th Cir. 2004) ("[A]n ALJ may discredit treating physicians' opinions that are
3 conclusory, brief, and unsupported by the record as a whole or by objective medical
4 findings.")

5 First, Dr. Langer completed a check box form in assessing Plaintiff's limitations,
6 yet the record also shows that he based this opinion on his extensive treating
7 relationship with Plaintiff. *See Garrison v. Colvin*, 795 F.3d 995, 1008 (9th Cir. 2014)
8 (Check box forms completed by physicians that have significant experience with a
9 patient and are based on numerous records are entitled to weight that unsupported and
10 unexplained check box forms do not merit). Second, Dr. Langer provided more than one
11 explanation for his opinion, once in September 2008 and again in October 2008, and
12 specifically stated that his opinion was based on his consistent treatment of Plaintiff
13 from March 2007 to October 2008. AR 954, 984. In both cases, Dr. Langer explained in
14 detail the Plaintiff's diagnoses, the clinical findings to support his diagnoses, his
15 assessment of Plaintiff's work-related mental limitations based on these impairments,
16 and his opinion that Plaintiff's impairments had been disabling since July 2005. *Id.*

17 Third, the ALJ reasoned that Dr. Langer did not explain his opinion that Plaintiff
18 had marked limitations in sustaining an ordinary routine without supervision; completing
19 a normal work week without interruptions from psychologically based symptoms; and
20 performing work at a consistent pace. AR 1389. The ALJ reasoned that Dr. Langer's
21 opinion concerning sustaining an ordinary routine without supervision was inconsistent
22 with the record, which indicated that Plaintiff was able to perform several routine
23 activities of daily living without supervision. *Id*; *see also See Morgan v. Comm'r Soc.*

1 Sec. Admin., 169 F.3d 595, 600 (9th Cir.1999) (an ALJ may discredit a claimant's
2 testimony when the claimant reports participation in everyday activities indicating
3 capacities that are transferable to a work setting). As discussed above, Dr. Langer
4 explained in detail the reasons why he assessed Plaintiff as having marked mental
5 limitations.

6 Further, none of the basic activities of daily living the ALJ cites as being
7 inconsistent with Dr. Langer's opinion – caring for her son, preparing meals, and
8 performing basic household chores – are transferrable to a work setting in a way that
9 would detract from Plaintiff's credibility or cast doubt on Dr. Langer's opinion. AR 1389;
10 see *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir.2001) ("This court has repeatedly
11 asserted that the mere fact that a plaintiff has carried on certain daily activities, such as
12 grocery shopping, driving a car, or limited walking for exercise, does not in any way
13 detract from her credibility as to her overall disability. One does not need to be 'utterly
14 incapacitated' in order to be disabled."), citing *Fair v. Bowen*, 885 F.2d 597, 603 (9th
15 Cir.1989); *Diedrich v. Berryhill*, 874 F.3d 634, 643 (9th Cir. 2017) ("House chores,
16 cooking simple meals, self-grooming, paying bills, writing checks, and caring for a cat in
17 one's own home, as well as occasional shopping outside the home, are not similar to
18 typical work responsibilities.").

19 As for the ALJ's fourth reason, an ALJ may reject a medical opinion that is "brief,
20 conclusory, and inadequately supported by clinical findings." *Bayliss v. Barnhart*, 427
21 F.3d 1211, 1216 (9th Cir. 2005), citing *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th
22 Cir.2001); see also *Meanel v. Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999) (holding that
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1 statement that the plaintiff would have “decreased concentration skills” was too vague to
2 be useful in the disability determination); 20 C.F.R. § 404.1527(c)(3).

3 In his September 2008 narrative statement, Dr. Langer opined that Plaintiff was
4 incapable of performing even low stress work. AR 954. In October 2008, Dr. Langer
5 clarified his opinion by stating that Plaintiff was incapable of maintaining any type of
6 gainful employment. AR 984. See *Hill v. Astrue*, 698 F.3d 1153, 1160 (9th Cir. 2012) (a
7 physician’s opinion that it was unlikely that the claimant could sustain full-time
8 competitive employment is not a conclusion reserved to the Commissioner, but is “an
9 assessment based on objective medical evidence of [the claimant’s] likelihood of being
10 able to sustain full-time employment given the many medical and mental impairments
11 [claimant] faces and her inability to afford treatment for those conditions.”) (citing 20
12 C.F.R. § 404.1527(d)(1)). Dr. Langer assessed specific limitations consistent with his
13 finding that Plaintiff was incapable of performing even low stress work. AR 917-22. As
14 such, the ALJ erred in finding that Dr. Langer’s opinion was insufficiently specific.

15 With respect to the ALJ’s fifth reason, the ALJ reasoned that Dr. Langer’s opinion
16 that Plaintiff had marked limitations in working in proximity to others without being
17 distracted by them was inconsistent with Plaintiff’s statements to E. Andrea Shadrach,
18 Psy.D and C. Michael Regets, Ph.D., that she had always gotten along well with co-
19 workers and preferred a job that involved interaction with co-workers. AR 1388; see 20
20 C.F.R. § 404.1527(c)(4) (“Generally, the more consistent a medical opinion is with the
21 record as a whole, the more weight we will give to that medical opinion.”).

22 First, these isolated comments cannot, by themselves, be sufficient to discount
23 the detailed and well-supported opinion of Plaintiff’s treating physician Dr. Langer. See
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1 *Ghanim v. Colvin*, 763 F.3d 1154, 1166 (9th Cir. 2014); see also *Attmore v. Colvin*, 827
2 F.3d 872, 875 (9th Cir. 2016) (quoting *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir.
3 1999) (the Court “cannot affirm . . . ‘simply by isolating a specific quantum of supporting
4 evidence,’ but ‘must consider the record as a whole, weighing both evidence that
5 supports and evidence that detracts from the [Commissioner’s] conclusion.’”)).

6 Further, the decision is not based on substantial evidence because the ALJ did
7 not have factual support in characterizing Plaintiff’s presentation to Dr. Shadrach and
8 Dr. Regets as being inconsistent with the findings of Dr. Langer. Although the record
9 shows Plaintiff told Dr. Shadrach that she got along with her co-workers and supervisors
10 at her most recent job, during her evaluation with Dr. Shadrach, Plaintiff also stated that
11 she left her job because she had difficulty making decisions and being around crowds.
12 AR 1098. Plaintiff was extremely agitated with Dr. Shadrach’s staff and those who
13 denied her disability claim, with Dr. Shadrach stating that Plaintiff was “guarded and
14 petulant” during her clinical interview. AR 1097. The Plaintiff also explained that her
15 mental health symptoms made it difficult for her to go places, interact with others, and
16 maintain friendships. *Id.* Despite the preference she expressed to Dr. Regets
17 concerning working with others, Plaintiff described similar symptoms during his
18 examination. AR 961-62; see *Reddick v. Chater*, 157 F.3d 715, 722-23 (9th Cir. 1998)
19 (“In essence, the ALJ developed [her] evidentiary basis by not fully accounting for the
20 context of materials or all parts of the . . . reports. [Her] paraphrasing of record material
21 is not entirely accurate regarding the content or tone of the record.”).

22 As such, the Court cannot say that the ALJ provided specific, legitimate reasons
23 for discounting Dr. Langer’s opinions.

1 B. Dr. Akins

2 On November 13, 2017, Dr. Akins testified as a medical expert during the
3 hearing preceding the ALJ's unfavorable decision. AR 1414-42. Dr. Akins testified that
4 he reviewed the entire medical record and felt he had sufficient information to offer an
5 opinion regarding Plaintiff's impairments. AR 1415. Dr. Akins testified that based on his
6 review of the record, Plaintiff had the severe impairments of pain disorder, major
7 depressive disorder, anxiety disorder, and a history of learning disorder. *Id.*

8 Dr. Akins testified that there was a "certainty" that Plaintiff had marked mental
9 limitations, and that there were "some data points that do indicate some severe
10 limitations, some marked limitations." AR 1416. Dr. Akins stated that the primary source
11 of information regarding Plaintiff's mental impairments was Plaintiff's treating
12 psychologist Dr. Langer, who saw Plaintiff "a handful" of times between March 2007 and
13 January 2008. AR 1416, 1423, 1434-35.

14 Dr. Akins disagreed with Dr. Langer's opinion that Plaintiff would be unable to
15 perform full-time work, reasoning that it was inconsistent with the treatment record and
16 a September 1, 2011 psychological evaluation from Dr. Shadrach, who opined that
17 Plaintiff would have marked limitations in understanding, remembering, and carrying out
18 instructions, but no more than moderate work-related mental limitations in other
19 domains. AR 1416-17, citing AR 1097-1102, 1125-27.

20 Dr. Akins stated that Dr. Langer had provided a "fairly small snapshot" of
21 Plaintiff's functioning between March 2007 and January 2008, but his opinions about
22 Plaintiff's limitations were consistent, and he had "some evidence" to support his
23 opinion. AR 1424. Dr. Akins stated that Dr. Shadrach's 2011 opinion may not have been
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1 inaccurate despite its apparent conflict with Dr. Langer's 2008 opinion, since Plaintiff's
2 mental health treatment may have improved her condition during the interim, especially
3 given the apparent lack of mental health treatment in 2009 and 2010. AR 1424-25.

4 Plaintiff's attorney later explained that she did not receive treatment during this
5 period because she did not have access to medical care, to which Dr. Akins responded
6 that he believed an individual with sufficient persistence and motivation would be able to
7 obtain medical care despite an inability to pay. AR 1435-36.

8 Dr. Akins began by assessing the paragraph B criteria. The ALJ must evaluate
9 the paragraph B criteria to determine if the severity of the claimant's mental impairment
10 meets or is medically equal to the criteria of a listed impairment. 20 C.F.R. Part 404,
11 Subpart P, Appendix 1. To meet the paragraph B criteria, a claimant must have an
12 extreme limitation of one, or marked limitation of two, of the following areas of mental
13 functioning: understanding, remembering, or applying information; interacting with
14 others; concentrating, persisting, or maintaining pace; and adapting or managing
15 oneself. 20 C.F.R. pt. 404, subpt. P app. 1, § 12.00(E).

16 Dr. Akins opined that Plaintiff had moderate to marked limitations in
17 understanding, remembering, and applying information, with Plaintiff's limitations being
18 closer to the "marked end of the equation" due to a finding that Plaintiff had a verbal IQ
19 of 67, but also expressed some uncertainty about this finding, citing test results from Dr.
20 Shadrach's examination which suggested that Plaintiff may have been exaggerating or
21 malingering. AR 1417-18, 1426-27 citing AR 1100-01. Dr. Akins also expressed
22 uncertainty that a person with an IQ of 67 could perform Plaintiff's past work as a mental
23 health technician. AR 1427.

1 Dr. Akins assessed Plaintiff as having moderate to marked limitations in
2 interacting with others, moderate limitations in maintaining concentration, persistence,
3 and pace, and moderate to marked limitations in adapting and managing herself, again
4 citing the opinions of Dr. Langer and Dr. Shadrach. AR 1418-20.

5 Dr. Akins concluded that he could not say with a medical certainty that Plaintiff
6 had marked limitations in two of the paragraph B domains. AR 1420. Dr. Akins opined
7 that the record "potentially" would support a finding of a closed period of disability
8 consistent with Dr. Langer's opinion, but that there was insufficient information to
9 support a finding of disability in 2011, when Dr. Shadrach examined Plaintiff. AR 1425-
10 26. Dr. Akins stated that because Dr. Langer's treatment notes did not cover a period of
11 at least 12 months, he was unable to offer an opinion that Plaintiff was disabled. AR
12 1440-41; see 20 C.F.R. § 404.1509 (a claimant's impairment must have lasted or must
13 be expected to last for a continuous period of at least 12 months to be disabling). Based
14 on his review of the record, Dr. Akins opined that Plaintiff:

15 would do better in a situation where there's only occasional interaction
16 with peers, and co-workers, and the general public. I think educational
17 somehow gets translated into up to one-third of a time, but in any event,
18 some substantial reduction in the amount of time the person needs to be
19 around other people, or interacting with the public, co-workers, or
20 supervisors. That simple repetitive task would be more likely to be
21 successfully completed with complex tasks, perhaps maybe beyond the
22 scope of the person's ability. And, I would say that because the person
23 has had past difficulties, and a diagnosis of anxiety, that a time pressure
24 environment would not be a good situation. So, claimant would probably
25 do better with some kind of piecemeal job, sorting bins, picking out
clothes, something along those lines, but not something where there's a
timed urgency, or timed element to the job.

22 AR 1428-29. Dr. Akins opined that it would be a good idea for the agency to appoint a
23 payee to manage Plaintiff's benefits. AR 1429-30.

1 When questioned by Plaintiff's attorney, Dr. Akins acknowledged that the verbal
2 IQ score of 67 did not come from Dr. Shadrach's 2011 examination, in which she
3 expressed concerns that Plaintiff was malingering, but from an earlier 2007 examination
4 conducted by Dr. Regets who expressed no such concerns. AR 1430-31, citing AR 964-
5 65.

6 Plaintiff's attorney cited Dr. Regets statement that Plaintiff appeared to be
7 dealing with her physical difficulties "at a magnified level" and that it was not unusual for
8 individuals with limited intellectual capacity to have a reduced ability to distract
9 themselves from pain and fatigue. AR 1431-32, citing AR 969. When asked if this could
10 explain Dr. Shadrach's observation that Plaintiff might be malingering, Dr. Akins stated
11 that it was possible, but that he was uncertain if it was true in Plaintiff's case. AR 1432.
12 Dr. Akins stated that Plaintiff's mental impairments would not meet listing 12.05. AR
13 1433.

14 When asked if the combination of Plaintiff's physical and mental impairments
15 would make it difficult for Plaintiff to perform full-time work, Dr. Akins stated that
16 Plaintiff's attorney was "preaching to the choir on that one" and that "it was clear that
17 pain exacerbates psychiatric problems, and psychiatric problems typically exacerbate a
18 person's perception of their pain." AR 1436-37. However, Dr. Akins stated that the
19 Social Security Administration had not solicited his opinion on this question, and that
20 that he thought it best to stay in his lane. AR 1437.

21 The ALJ assigned "significant weight" to Dr. Akins' opinion, specifically Dr. Akins'
22 opinion that Plaintiff should be limited to simple repetitive tasks, in a workplace with no
23 more than occasional interaction with peers/co-workers and the general public, and that
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1 given her anxiety, she should not have strict time requirements. AR 1380. The ALJ
2 reasoned that Dr. Akins' opinion was consistent with the medical record. *Id.*

3 The ALJ also found that it was appropriate for Dr. Akins' to limit his scope of
4 review to Plaintiff's mental health, and stated that the inconsistencies discussed in the
5 hearing decision provided sufficient data points to contradict Dr. Langer's opinion and
6 Dr. Akins' conclusion that a closed period of disability was appropriate. AR 1380-81.

7 For the reasons discussed above, the ALJ has not provided specific and
8 legitimate reasons for discounting Dr. Langer's opinions. See *supra* Section I.A. Further,
9 Dr. Akins stated that because Dr. Langer's treatment notes did not cover a period of at
10 least 12 months, he was unable to offer an opinion that Plaintiff was disabled. AR 1440-
11 41. To the extent that Dr. Akins based his opinion on this conclusion, he erred, given
12 that Dr. Langer clearly treated Plaintiff for more than 12 months, and specifically opined
13 that Plaintiff's period of disability would extend back to July 2005. AR 954, 984, 1072-
14 73. Dr. Akins statement that Dr. Langer only treated Plaintiff a "handful" of times and
15 provided only a "small snapshot" of Plaintiff's functioning is inconsistent with Dr.
16 Langer's treatment notes, which indicate that he saw Plaintiff 14 times and knew
17 Plaintiff "quite well at that time." AR 1071, 1416, 1424.

18 The ALJ erred in relying upon Dr. Akins' opinion, which itself relied upon Dr.
19 Akins' speculation that Plaintiff's mental health treatment may have improved her
20 condition given an apparent lack of mental health treatment in 2009 and 2010, and Dr.
21 Akins' statement that a sufficiently motivated individual would be able to obtain medical
22 care despite an inability to pay. AR 1424-25, 1435-36; see Social Security Ruling
23 ("SSR") 16-3p (If an individual fails to follow prescribed treatment that might improve
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1 symptoms, an ALJ may find that the alleged intensity of an individual's symptoms are
2 inconsistent with the record. However, an ALJ "will not find an individual's symptoms
3 inconsistent with the evidence in the record on this basis without considering possible
4 reasons he or she may not comply with treatment or seek treatment consistent with the
5 degree of his or her complaints.").

6 The ALJ has not provided specific, legitimate reasons for discounting Dr.
7 Langer's opinions, and has given significant weight to Dr. Akins' opinion. Both agree
8 that Plaintiff was disabled, at a minimum, for a closed period, with Dr. Akins stating that
9 he was unable to find Plaintiff disabled primarily because of his mistaken belief that Dr.
10 Langer had treated Plaintiff's mental impairments for less than 12 months. AR 1440-41.
11 For the reasons discussed above, Dr. Akins' conclusion that Plaintiff's lack of treatment
12 in 2009 and 2010 indicates that she was not disabled during this period is not supported
13 by substantial evidence. Further, both Dr. Langer and Dr. Akins have indicated that
14 Plaintiff's physical impairments could significantly impact her psychiatric impairments.
15 AR 914, 1436-47. Further, Dr. Langer stated in January 2011 that given her
16 presentation during their visits, "not much" was likely to have changed since their last
17 appointment in October 2008. AR 1071-72.

18 The opinions of Dr. Langer and Dr. Akins are consistent with a finding that
19 Plaintiff was disabled between her alleged onset date of February 10, 2006 and Dr.
20 Shadrach's September 1, 2011 exam, after which Dr. Shadrach assessed less severe
21 mental limitations. AR 1097-1102, 1125-27, 1360.

1 Accordingly, Plaintiff's Motion to Alter or Amend Judgment is GRANTED, and this
2 case is remanded for an award of benefits as to the period between February 10, 2006
3 and August 31, 2011.

4 **C. Remand for an Award of Benefits**

5 "The decision whether to remand a case for additional evidence, or simply to
6 award benefits[,] is within the discretion of the court." *Trevizo v. Berryhill*, 871 F.3d 664,
7 682 (9th Cir. 2017) (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). If
8 an ALJ makes an error and the record is uncertain and ambiguous, the court should
9 remand to the agency for further proceedings. *Leon v. Berryhill*, 880 F.3d 1041, 1045
10 (9th Cir. 2017). Likewise, if the court concludes that additional proceedings can remedy
11 the ALJ's errors, it should remand the case for further consideration. *Revels*, 874 F.3d
12 at 668.

13 The Ninth Circuit has developed a three-step analysis for determining when to
14 remand for a direct award of benefits. Such remand is generally proper only where

15 "(1) the record has been fully developed and further administrative
16 proceedings would serve no useful purpose; (2) the ALJ has failed to
17 provide legally sufficient reasons for rejecting evidence, whether claimant
18 testimony or medical opinion; and (3) if the improperly discredited
19 evidence were credited as true, the ALJ would be required to find the
20 claimant disabled on remand."

21 *Trevizo*, 871 F.3d at 682-83 (quoting *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir.
22 2014)).

23 The Ninth Circuit emphasized in *Leon v. Berryhill* that even when each element is
24 satisfied, the district court still has discretion to remand for further proceedings or for
25 award of benefits. 80 F.3d 1041, 1045 (9th Cir. 2017).

In this case, the record has been fully developed and further administrative proceedings would serve no useful purpose. The ALJ has failed to provide legally sufficient reasons for rejecting Dr. Langer's opinions or those portions of Dr. Akins' opinion consistent with a finding of disability. If this evidence were credited as true, the ALJ would be required to find Plaintiff disabled, at a minimum, between her alleged onset date, February 10, 2006, and the day before Dr. Shadrach's examination, August 31, 2011. The Court also considered the length of time Plaintiff has been waiting for a final disposition. See *Smolen v. Chater*, 80 F.3d 1273, 1292 (9th Cir. 1996). Plaintiff filed her application for disability insurance benefits in 2006, and has been waiting 14 years for a final decision on her claim. AR 430-34, 1357.

CONCLUSION

Based on the foregoing discussion, Plaintiff's Motion to Alter or Amend Judgment is GRANTED and this case is remanded for an award of benefits as to the period between February 10, 2006 and August 31, 2011.

Dated this 27th day of February, 2020.

Theresa L. Fruke

Theresa L. Fricke
United States Magistrate Judge